IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 31 OF 2007

Mr. Sunil Chandrashekar Jantli,
R/o. S-2, B-WING,
Peace Heaven Apartments,
Alto-Porvorim,
Bardez-Goa. ... Applicant

versus

1. State
   Through Public Prosecutor.

2. M/s. Goa Mining Corporation,
   A partnership Firm, represented
   by its Chairman, Mr. Tome Hiltor
   De Oliveira, with its office at
   1st Floor, Centro Costa Campos,
   31st January Road, Panaji-Goa
   through his P.O.A., Shri Manuel
   Agnelo Lourenco. ... Respondents

Mr. Rohit Bras De Sa, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent No.1.

Mr. R. G. Ramani, Advocate for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 2ND AUGUST, 2007.

ORAL JUDGMENT

Heard the learned Counsel on behalf of both the parties.

2. Admit.

3. By consent heard forthwith.

4. This revision petition is directed against two concurrent findings of the Courts below holding the Applicant/Accused guilty under Section 138 of the Negotiable Instruments Act, 1881(Act, for short) and sentencing him to undergo S. I. for 30 days and directing him to pay a sum of Rs.5,00,000/- by way of compensation.

5. The Respondent No.2/Complainant was a firm of which Mr. Tome Hiltor De Oliveira was one of the four partners and as per the Complainant the Accused was advanced a sum of Rs.4,00,000/- by the said firm for the supply of ore and since the Accused could not supply the ore, towards the repayment of the sum advanced of Rs.4,00,000/-, the Accused gave to the Complainant cheque No.369541 dated 26-11-2004 in the sum of Rs.4,00,000/- drawn on ICICI Bank, Panaji Branch, which cheque when presented for collection was returned dishonoured for insufficiency of funds and upon the statutory notice dated 14-1-2005 having been addressed to the Accused, the said notice was returned unclaimed and therefore the Complainant prosecuted the Accused under Section 138 of the said Act.

6. The Accused in the course of the trial took twofold defences. First, in the cross-examination of the Complainant, stating that the said cheque was obtained from the Accused by practicing deceit and fraud, and the second, in his

statement recorded under Section 313 of the Code of Criminal Procedure, 1973 stating that the said cheque was issued as security towards some mutual understanding for future business, even without specifying what was the nature of the said future business. In any event, it must be observed that the Accused by taking the said two pleas landed neither here nor there in that the Accused failed to translate the said pleas into evidence.

7. Both the Courts below relying upon the case of **Hiten P. Dalal** v. **Bratindranath Banerjee**((2001) 6 SCC 16) have come to the conclusion that it was upon the accused to rebut the presumption available to the Complainant under Section 139 of the Act and on the facts of the case the accused had failed to rebut the said presumption by the standard of preponderance of probability. As far as the statutory notice is concerned, admittedly it was addressed on the correct address of the Accused and as the postal endorsement shows that the Accused was intimated and it was thereafter returned to the Complainant with endorsement “unclaimed” and being so the presumption in terms of Section 27 of the General Clauses Act, 1897 was clearly available to the Complainant which the Complainant failed to rebut by lending any evidence whatsoever. A mere word of the Complainant that he had not received the same was insufficient to rebut the said presumption.

8. The learned Counsel on behalf of the Applicant/Accused submits that the Complainant had not shown the sum of Rs.4,00,000/- advanced by him to the Accused in his returns filed for the assessment year 2004-2005. That was

hardly necessary considering the various presumptions which are available to a Complainant once the cheque given by the Accused is returned dishonoured due to insufficiency of funds and the Accused fails to comply with the written request made to pay the amount of cheque.

9. Both the Courts below have considered all the necessary aspects of the case and have convicted and sentenced the Accused, as aforesaid. In fact, by virtue of the Judgment dated 21-12-2006 of the learned Additional Sessions Judge, the Accused was required to surrender within a period of four weeks for the purpose of undergoing the sentence. There has been no stay of that Judgment. The Accused to surrender forthwith.

10. With the above observations, this revision application is hereby dismissed, as without any merits.

N. A. BRITTO, J.

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